

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re)	Case No.
)	
)	Related Case Nos.
)	S097160; S065934;
ANDERSON HAWTHORNE,)	S004707; Crim No.
)	25218
)	
Petitioner,)	Los Angeles Superior
)	Court Case No. A36104
On Habeas Corpus)	
)	
)	

PETITION FOR WRIT OF HABEAS CORPUS

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I. PROCEDURAL BACKGROUND

Petitioner Anderson Hawthorne Jr. was sentenced to death by the Los Angeles Superior Court on February 18, 1986. His conviction and sentence were affirmed by this Court in People v. Hawthorne (1992) 4 Cal.4th 43 on December 3, 1992, and certiorari was denied from that decision in Hawthorne v. California (1993) 510 U.S. 1013 on December 10, 1993.

On April 27, 2001, Petitioner's current counsel filed a Petition for Writ of Habeas Corpus (hereinafter "the April 27, 2001 Petition"), asserting that Mr. Hawthorne's execution would be cruel and unusual because he is mentally retarded, in response to an order of the United States Supreme Court granting certiorari on that issue in McCarver v. North Carolina (2001) 532 U.S. 941. On January 29, 2002, this Court denied the April 27, 2001 Petition solely on the merits.

On June 20, 2002, the United States Supreme Court issued its decision in Atkins v. Virginia (2002) 536 U.S. 304, which confirmed Petitioner's legal argument, made in the April 27, 2001 Petition, that execution of mentally retarded individuals constitutes cruel and unusual punishment.

The United States Court of Appeals for the Ninth Circuit has required habeas petitioners to re-assert claims in state court when, as in this case, "[t]he Supreme Court had changed federal law in a way that cast the legal issue in a

fundamentally different light.” Hudson v. Rushen (9th Cir. 1982) 686 F.2d 826, 830 n. 2 citing Blair v. California (9th Cir. 1965) 340 F.2d 741 (requiring habeas petitioner to re-assert claim that he was unconstitutionally denied counsel on appeal before this Court in light of Douglas v. California (1963) 372 U.S. 353.)

The Supreme Court’s decision in Atkins v. Virginia (2002) 536 U.S. 304 casts the legal issue raised in the April 27, 2001 Petition in a fundamentally different light. For this reason, Petitioner re-asserts that his execution would violate the Eighth Amendment to the United States Constitution because he is mentally retarded.

II. THIS PETITION IS TIMELY

Petitioner presented the facts contained in this Petition before the Atkins decision was even issued, and filed this Petition reasserting these claims within a year after the date the Atkins decision was issued. This Petition is not substantially delayed, since it was filed within a reasonable time from the time that Petitioner or his counsel should have known of the legal basis for these claims. In Re Robbins (1998) 18 Cal.4th 770, 787.

III. CLAIMS

CLAIM I

MR. HAWTHORNE'S EXECUTION WOULD BE CRUEL AND UNUSUAL PUNISHMENT, BECAUSE HE IS MENTALLY RETARDED

In Atkins v. Virginia, the United States Supreme Court concluded that it is cruel and unusual punishment to execute the mentally retarded. 536 U.S. at 321. Mr. Hawthorne is mentally retarded. From kindergarten on, Mr. Hawthorne was labeled "slow." I.Q. tests administered in 1967 and 1968 placed him at 86 and 74 respectively. (Exhibit 1, Declaration of Dale Watson, Ph.D., ¶ 38.)

In 1983, Dr. Michael Maloney administered a version of the Wechsler Adult Intelligence Scale Revised (WAIS-R) to Mr. Hawthorne in the Los Angeles County Jail. Mr. Hawthorne had an estimated I.Q. of 71, in the bottom 3% of the population in terms of overall intellectual ability. (Exhibit 2, Letter from Michael Maloney, Ph.D. to Albert DeBlanc dated October 1, 1993 at 3.) Dr. Maloney noted:

His Verbal I.Q. is actually somewhat lower than that. In verbal areas he would probably fall in the Mild range of Mental Retardation.

(Id.)

In 1995, Dr. Dale Watson administered a battery of neuropsychological tests to Mr. Hawthorne, which included the WAIS-R Test. Dr. Watson concluded:

Anderson Hawthorne is one of the most profoundly impaired individuals that I have seen within a

forensic population. His IQ was measured at 75. With the average IQ for the population at 100, and retardation indicated at between 70-75 or below if there are associated impairments of adaptive functioning, Anderson manifests significantly below average intelligence. In fact, he falls within the fifth percentile of the IQ range, which means that nearly 95% of the population is of higher intelligence than is he. The test results also indicate profound memory problems and psychomotor retardation.

(Exhibit 1, Declaration of Dale Watson, Ph.D. at ¶ 69.)

From Dr. Watson's evaluation of extensive records concerning Mr. Hawthorne, his clinical interviews with Mr. Hawthorne, and Mr. Hawthorne's performance on standardized tests, Dr. Watson concluded:

it is my opinion, based upon Mr. Hawthorne's obtained IQ scores and the history of impairment in adaptive capacities that Mr. Hawthorne can be legitimately classified as being mentally retarded.

The American Association on Mental Retardation provides the following criteria for such a diagnosis: Mental retardation refers to substantial limitations in present functioning. It is characterized by: (1) Significantly sub-average intellectual functioning; existing concurrently with (2) Related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction,

health and safety, functional academics, leisure, work; (3) Mental retardation manifests before age 18. Mr. Hawthorne's Full Scale IQ is 75 -- at the upper limit for the mentally retarded range.

In addition, he clearly has deficient abilities in functional academics, social skills and communication skills as revealed both on formal testing and the available social history. It also seems reasonable to conclude that he would have deficient skills in work capacity as well. These deficiencies are long-standing with an onset prior to the age of 18. As a result, I would diagnose Mr. Hawthorne as being mentally retarded.

(Id. at ¶¶ 95-96.)¹

¹Mr. Hawthorne's extreme cognitive and functional impairments are fully documented and explained in the Declarations of Drs. Yvette Guerrero and Dr. George Woods, which are attached hereto as Exhibits 3 and 4 respectively. These declarations, and all of the documents and declarations on which they relied were submitted as exhibits in support of an earlier habeas petition filed in this Court on November 20, 1997, which is incorporated herein by this reference.

CLAIM II

PETITIONER'S DEATH SENTENCE CONSTITUTES

CRUEL AND UNUSUAL PUNISHMENT BECAUSE

HE HAS LONG FUNCTIONED AT A LEVEL THAT IS

EQUIVALENT TO MENTAL RETARDATION

In reaching its conclusion that "death is not a suitable punishment for the mentally retarded criminal," the Supreme Court in Atkins concluded:

We are not persuaded that the execution of mentally retarded criminals will measurably advance the deterrent or retributive purpose of the death penalty. Construing and applying the Eighth Amendment in the light of our "evolving standards of decency," we therefore conclude that such punishment is excessive and that the Constitution "places a substantive restriction on the State's power to take the life" of a mentally retarded offender.

122 S.Ct. at 2252.

As noted in Claim I above, Petitioner is mentally retarded. However, even if this Court were to find that Petitioner is not mentally retarded, it remains true that from the time of his arrest through the present, Petitioner has suffered from a combination of mental illnesses and impairments that have an equivalent impact to mental retardation on Petitioner's mental functioning. As Dr. George Woods has noted:

Mr. Hawthorne suffers from a combination of psychiatric, neurological, and developmental deficits which prevent him from functioning normally. Mr. Hawthorne is both mentally

retarded and psychiatrically impaired. Before he was born, Mr. Hawthorne was exposed to in utero toxic assaults of a magnitude sufficient to cause Fetal Alcohol Syndrome and Effects. Before and during birth, his oxygen supply was cut off by his own umbilical cord. The combination of hypoxia and Fetal Alcohol Syndrome and Effects severely damaged Mr. Hawthorne's neurological and cognitive development. By the time of his birth, Mr. Hawthorne was already deprived of the organic ability to develop normally. If this deficits and organic injuries were not catastrophic enough, Mr. Hawthorne was also genetically predisposed to psychiatric infirmities such as Schizophreniform Spectrum Disorder. Indeed, the incredibly high incidence of mental illness that runs throughout his family confirms the appropriates of such a diagnoses. The conglomeration of cognitive and neurological deficits as well as psychiatric maladies is staggering. Mr. Hawthorne was further marginalized, traumatized and damaged by the environmental conditions in which he grew up. Raised in South Central Los Angeles, Mr. Hawthorne grew up in a war zone, with terrible poverty and few infra-structural supports. His schools lacked the ability to provide him with the care and attention he necessary to compensate for his mental retardation. Although he was diverted into what few special education classes there were, Mr. Hawthorne was predominantly ignored, received virtually no education and remains functionally illiterate. His developmental isolation and agitation was compounded and amplified by the horrific abuse leveled at him by his family and the environmental traumas inflicted upon him by the violence of life in South Central. The constant fear of attack from within his home as well as from the life threatening gang violence outside left deep psychiatric scars and post traumatic stress disorder. Such traumatic experiences create lifelong impairments in self-concept and self-esteem regulation, and severely impair the capacity for normal relationships. Mr. Hawthorne's multiple layers of organic as well as psychiatric impairments and deficits is truly remarkable. The confluence of these deficits explains why Dr. Watson concluded that "Mr. Hawthorne is one of the most profoundly impaired individuals that I have seen within a forensic population." (Watson Decl. ¶ 69). Given the foregoing, Mr. Hawthorne

was organically, genetically and environmentally precluded from normal development.

Exhibit 4, Declaration of George Woods, Jr., M.D. at ¶¶ 60-63.

Whether his mental impairments are characterized as mental retardation, dementia, or simply severe impairments resulting from a combination of brain damage, schizoaffective disorder, and other mental illness, it is plain that Mr. Hawthorne has suffered mental impairments that are as severe as mental retardation from the date of his arrest to the present. Accordingly, his execution would not "measurably advance the deterrent or retributive purpose of the death penalty." Atkins, 122 S.Ct. at 2252. For this reason, consistent with Eighth Amendment principles, Petitioner cannot be executed.²

²Moreover, the execution of Petitioner, who has long suffered from mental impairments that are equivalent to mental retardation, at a time when the mentally retarded are exempt from execution, would violate the Fourteenth Amendment's guarantees of equal protection of law and due process. See City of Cleburne v. Cleburne Living Center (1985) 473 U.S. 432, 440-41 (zoning decision against mentally retarded group home struck down because it did not bear a rational relationship to legitimate state interests).

PRAYER FOR RELIEF

Wherefore, Petitioner Anderson Hawthorne, Jr. requests that this Court:

1. Issue a Writ of Habeas Corpus to have Petitioner brought before this Court to the end that he might be relieved of his unconstitutional sentence of death;
2. Conduct a hearing at which proof may be offered concerning the allegations contained in this Petition;
3. Permit Petitioner, who is indigent, to proceed without payment of costs and fees, grant him authority to obtain subpoenas without fee for witnesses and documents necessary to prove facts alleged in this Petition, and grant him sufficient funds to investigate and secure testimony necessary to prove the facts alleged in the Petition; and
4. Grant Petitioner such other and further relief as the Court may deem just and proper.

DATED: June ___, 2003

Respectfully submitted,

MARIA E. STRATTON
Federal Public Defender

By: _____
HARRY SIMON
Deputy Federal Public Defender

Counsel for Petitioner
ANDERSON HAWTHORNE, JR.

VERIFICATION

I, Harry Simon, declare as follows:

1. I am an attorney licensed to practice in the State of California and I am a member of the Bar of this Court. I am counsel for Anderson Hawthorne, Jr. by appointment of this Court.

2. I make this verification as someone acting on behalf of Anderson Hawthorne, Jr.

3. I have read the foregoing Petition and am familiar with its contents. Some of the information contained in the Petition is information that I know to be true and correct based on my personal knowledge. The remaining information in the Petition is true and correct to the best of my knowledge, information, belief and understanding.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed this ____ day of June, 2003.

HARRY SIMON

PROOF OF SERVICE

I, the undersigned, declare that: I am employed in Los Angeles County, California; my business address is the Federal Public Defender's Office, 321 East Second Street, Los Angeles, California 90012-4202; I am over the age of eighteen years; I am not a party to the action entitled below; I am employed by the Federal Public Defender for the Central District of California, who is a member of the bar of the United States District Court for the Central District of California, and at whose direction I served a copy of the attached PETITION FOR WRIT OF HABEAS CORPUS on the following individual(s), addressed as follows, by:

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same in a
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same via
facsimile
machine:

ROBERT S. HENRY
Deputy Attorney General
for the State of California
300 South Spring Street, Suite 500
Los Angeles, California 90013

I declare under penalty of perjury that the foregoing
is true and correct to the best of my knowledge.

This proof of service is executed at Los Angeles,
California, on June __, 2003.

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